

OPENHW FOUNDATION PARTICIPATION AGREEMENT

This PARTICIPATION AGREEMENT (the “Participation Agreement”) is effective as of this day of , 20 (the “Effective Date”) by and between Eclipse Foundation AISBL (“Eclipse Foundation”), a Belgian international not-for-profit association (AISBL/IVZW) incorporated under the laws of Belgium, and (“Participant” or “You”), hereinafter individually and collectively referred to as the “Party/Parties”.

WHEREAS, Participant has entered into a Membership Agreement with Eclipse Foundation (the “Participant’s Membership Agreement”);

NOW THEREFORE, ECLIPSE FOUNDATION AND PARTICIPANT AGREE AS FOLLOWS:

1. Working Group Charter & Participant Commitments

(a) Working Group Participation

Participant agrees to participate in the OpenHW Foundation (“Working Group”). In particular, the Participant agrees to fulfill the obligations, including holding the corresponding required membership level in the Eclipse Foundation, and to receive the benefits of participating in the Working Group at the membership level selected below and as described in the Working Group Charter (“Charter”):

PLEASE CHOOSE YOUR WORKING GROUP PARTICIPATION LEVEL *	ECLIPSE FOUNDATION MEMBERSHIP REQUIREMENTS **
<input type="text"/> Strategic Member	Contributing Members
<input type="text"/> Participant Member	Contributing Members
<input type="text"/> Guest Member	Associate Members

* The Working Group Charter defines the levels of participation in the Working Group.

** The Working Group Charter specifies which of the three classes of Eclipse Foundation membership (Strategic/Contributing/Associate) is eligible to join each Participation Level. **Most members of Eclipse Foundation are either Contributing Members** (for profit companies) **or Associate Members** (not-for-profit organisations, universities, etc.). The Participant’s Membership Agreement has more information on all these classes of membership and the eligibility and associated fees for each.

2. Definitions

(a) “Annual Membership Fee” is the Annual Membership Fee as defined in the Eclipse Foundation Bylaws and the Participant’s Membership Agreement.

(b) The Working Group Charter is the Working Group’s charter available at: <https://www.eclipse.org/org/workinggroups/openhw-foundation-charter.php> and as may be amended from time-to-time thereafter in accordance with the Working Group Process.

- (c) "Working Group Participation Fees" are those "other dues" as defined in the Eclipse Foundation Bylaws and the Participant's Membership Agreement for participating in the Working Group, as established by the Working Group's Steering Committee and set forth in the Charter, as adopted and amended from time to time pursuant to the Working Group Process. At its discretion, the Working Group's Steering Committee may, pursuant to the Working Group Process, establish different tiers of participation and associated fees for the organisations participating in the Working Group.
- (d) The Working Group Process is available at <https://www.eclipse.org/org/workinggroups/process.php>, and which may be amended from time to time in accordance with the Eclipse Bylaws.
- (e) *Support for the transition of original OpenHW Group members to keep their original invoice date.*

By default, You will be billed your Working Group Participation Fees on the Effective Date of this Agreement, and on the anniversary of that date each year (the "Annual Working Group Billing Date").

As an exception to the foregoing, if You

- (i) have been or currently are a party to an OpenHW Group Membership Agreement, and
- (ii) have paid your membership fees in full to OpenHW Group within the past twelve (12) months from the Effective Date of this Agreement,

then the following shall apply to Your Annual Working Group Participation Fees and Annual Billing Date:

- Your Annual Working Group Billing Date will be established on the anniversary of the Effective Date of your membership agreement with OpenHW Group rather than the anniversary of the Effective Date of this Agreement.
- You will not owe your Annual Working Group Participation Fees to Eclipse Foundation until your Annual Working Group Billing Date.
- You shall pay the Annual Membership Fee as described in Clause 2(c) above in full on every subsequent Annual Working Group Billing Date for the remainder of the term of this Agreement.
- As an additional incentive, if the Effective Date of this Agreement is before 1 January 2025, You will receive a discount on your first year's Working Group Participation Fees; the discount will be the greater of 10% of the OpenHW Foundation fee or 4.000€.

3. **THIS SECTION IS LEFT INTENTIONALLY BLANK**

4. **Term**

The term of this Participation Agreement shall commence as of the Effective Date and shall continue indefinitely, subject to the terms of Section 6, Termination.

5. Fees

In addition to the Annual Membership Fee as agreed to in the Participant's Membership Agreement, Participant agrees to pay the Working Group Participation Fees as defined in the Charter and which are included in Exhibit A for reference and any other working group participation fees by reason of Participant's participation in any other Eclipse working group(s). These Working Group Participation Fees may be amended from time to time in accordance with the Working Group Charter; however, any change in Working Group Participation Fees will not be applied retroactively.

Unless otherwise specified in the Charter or in accordance with Clause 2(e) above, Participant agrees to pay the Working Group Participation Fees, including any amendments to the Working Group Participation Fees made from time-to-time as described herein, upon execution of this Agreement, and on each anniversary of the Effective Date.

Payment of all fees must be made in accordance with the Eclipse Foundation Bylaws and the Participant's Membership Agreement.

6. Termination

- (a) Subject to any terms noted in Section 1 above, Participant may terminate its participation in the Working Group by sending email or written notice to the Secretary of the Eclipse Foundation. Participant's Membership Agreement as well as any other Agreements between the Parties shall survive such termination.
- (b) A termination of the Participant's Membership Agreement shall automatically terminate this Participation Agreement and, except as expressly set forth in this Participation Agreement, the Participant's Membership Agreement, or in any license granted to software or other content while a Member, no rights or benefits shall survive hereunder.
- (c) This Participation Agreement shall terminate if the Working Group is terminated in accordance with the Working Group Process. Participant's Membership Agreement as well as any other Agreements between the Parties shall survive such termination.
- (d) Notwithstanding any termination of this Participation Agreement under Section 6 or otherwise, Participant shall not be entitled to receive any refund, pro rata or otherwise, of any Working Group Participation Fees, other fees, dues, or assessments paid under this Participation Agreement. Notwithstanding a termination under this Section 6 (other than Section 6(c)), and subject to the terms of Section 5, Participant shall remain obligated to pay the Working Group Participation Fees or portion thereof due and unpaid hereunder.

7. General

7.1 Limitation of Liability. To the extent permissible by law, in no event will either the Eclipse Foundation or Participant be liable to each other under this Agreement for the cost of procuring substitute goods or services, lost profits, lost revenue, lost sales, loss of use, loss of data or any incidental consequential, direct, indirect, punitive or special damages, whether or not such Party had advance notice of the possibility of such losses or damages.

7.2 Governing Law. Any dispute arising out of or in relation with the conclusion, validity, existence, enforcement and termination of this Agreement, and its interpretation, on contractual or extra-contractual grounds shall be construed and governed by the laws of Belgium without reference to conflict of laws principles.

7.3 Dispute Resolution. Both the Eclipse Foundation and Participant irrevocably agree that the Courts of the judicial district of Brussels, Belgium, shall have exclusive jurisdiction to settle any dispute or claim (as detailed under Section 7.2). Notwithstanding the foregoing, if the dispute involves a Participant that is an organization established by a treaty or other instrument governed by international law possessing its own international legal personality ("Intergovernmental Organisation") and enjoys immunity from legal processes of any jurisdiction, national court or other authority, then the Parties agree that (a) Nothing in this Agreement and nothing in the Bylaws, Membership Agreement, Internal Rules, additional policies, procedures and other governance rules adopted by the Eclipse Foundation constitutes or may be interpreted as a limitation upon or waiver of that immunity and (b) any dispute or claim (as detailed under Section 6.2) will be governed by Belgian law and finally settled by arbitration. Unless otherwise agreed by the Parties in writing, arbitration shall be conducted under the Rules of Arbitration of the International Chamber of Commerce by one (1) or more arbitrators appointed in accordance with the said Rules. The place of arbitration shall be Brussels, Belgium. The language of arbitration shall be English.

7.4 Counterparts. This Agreement may be signed in counterparts, in the number of originals stated hereinafter on the signature page. When taken together, the counterparts signed by all Parties shall constitute one and the same instrument.

7.5 Assignment. Participant may not assign their rights or obligations under this Agreement without the prior written consent of the Eclipse Foundation. For purposes of this Agreement, an assignment shall be deemed to include a transfer or sale of all or substantially all of the business of Participant, or a merger, consolidation or other transaction that results in a change in control of Participant.

7.6 Independent Contractors. The relationship of the Eclipse Foundation and Participant established by this Agreement is that of independent contractors. This Agreement does not give either Party the power to direct and control the day-to-day activities of the other, constitute the Parties as partners, joint ventures, co-owners, principal-agent or otherwise participants in a joint or common undertaking, or, except as expressly provided herein, allow either Party to create or assume any obligation on behalf of the other for any purpose whatsoever.

7.7 Order of Precedence. Notwithstanding anything else to the contrary in this Agreement or any other agreement entered into with the Eclipse Foundation, in the case of the conflict between the terms of this Agreement and the Participant's Membership Agreement, the terms of the Participant's Membership Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Participation Agreement as of the Effective Date written above.

PARTICIPANT

By:

Printed Name:

Title:

Date:

ECLIPSE FOUNDATION AISBL

By:

Printed Name:

Title:

Date:

EXHIBIT A OPENHW FOUNDATION Fee Table

The following table is taken from the then-current fee table included in the OpenHW Foundation Charter. It is included for illustration purposes only. Participant agrees to pay the Participation Fees in accordance with the terms of this Participation Agreement.

OpenHW Foundation Participation Fees

Strategic Member: Participation Fee Table

Corporate Revenue	Strategic Member Annual Fees
Annual Corporate Revenues greater than €1 billion	€125 000
Annual Corporate Revenues greater than €100 million but less than or equal to €1 billion	€90 000
Annual Corporate Revenues greater than €50 million but less than or equal to €100 million	€60 000
Annual Corporate Revenues greater than €10 million but less than or equal to €50 million	€40 000
Annual Corporate Revenues less than €10 million	€20 000
Annual Corporate Revenues less than €1 million	€20 000
Govt, Govt Agys, Research Orgs, NGOs, etc.	€25 000
Academic, Publishing Orgs, User Groups, etc.	€25 000

Participant Member: Participation Fee Table

Corporate Revenue	Participant Member Annual Fees
Annual Corporate Revenues greater than €1 billion	€40 000
Annual Corporate Revenues greater than €100 million but less than or equal to €1 billion	€25 000
Annual Corporate Revenues greater than €50 million but less than or equal to €100 million	€10 000
Annual Corporate Revenues greater than €10 million but less than or equal to €50 million	€10 000
Annual Corporate Revenues less than €10 million	€5 000
Annual Corporate Revenues less than €1 million	€1 500
Govt, Govt Agys, Research Orgs, NGOs, etc.	€6 000
Academic, Publishing Orgs, User Groups, etc.	€1 000

Note: Guest members pay no Participation Fees.